

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.304(1) and 455D.7, the Environmental Protection Commission (Commission) hereby amends Chapter 100, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 101, “Solid Waste Comprehensive Planning Requirements,” and Chapter 111, “Annual Reports of Solid Waste Environmental Management Systems,” Iowa Administrative Code.

This rule making reflects legislative changes to the Iowa Code and encompasses the comprehensive five-year review of rules that the Department of Natural Resources (Department) is currently conducting pursuant to Iowa Code section 17A.7(2). The rule making eliminates inconsistencies with the Iowa Code, removes redundant reporting requirements, eliminates unnecessary and obsolete language and makes corrections to Iowa Code references, thus simplifying the rules of the Commission and making them easier to use and understand.

These amendments:

- Move certain definitions from Chapter 101 to Chapter 100.
- Make minor corrections to Chapter 101 for consistency with the applicable state statutes.
- Rescind rule 567—101.3(455B,455D) pertaining to the state’s waste management hierarchy and replace all references to rule 567—101.3(455B,455D) with references to Iowa Code section 455B.301A.
- Amend rules 567—101.6(455B,455D) and 567—101.7(455B,455D) and rescind subrule 101.13(8) to reflect recent legislative changes to Iowa Code section 455D.3 regarding required solid waste management techniques for planning areas that fall below the 25 percent waste volume reduction goal. See 2013 Iowa Acts, House File 225, signed by Governor Branstad on March 28, 2013.
- Remove the waiver in subrule 101.7(3) that exempts from the state tonnage fee waste generated during a declared disaster. The Iowa Code does not give the Department the authority to issue this waiver.
- Rescind rules 567—101.10(455B,455D) and 567—101.11(455B,455D), which, in effect, will remove the requirement for local governments to complete the Municipal Solid Waste and Recycling Survey and accompanying forms.
- Adopt new paragraph 101.13(2)“k” in order to recognize that annual reporting efforts of planning areas and service areas that are designated as Environmental Management Systems (EMS) under Iowa Code chapter 455J meet the comprehensive plan update requirements in subrule 101.13(2).
- Adopt an updated definition of “comprehensive plan update” to reflect the 2009 amendments to Chapter 101, such that in the definition of “planning cycle,” the length of time between the due date of each comprehensive plan was extended from three years to five years. The current definition of “comprehensive plan update” requires planning agencies to incorporate a proposed course of action for the “next two planning cycles” (10 years), which has proven to be too long to allow for accurate planning. As such, the new definition requires the “comprehensive plan update” to address only the next planning cycle (5 years). Additional revisions have been incorporated throughout the proposed amendments to meet this objective.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2630C** on July 20, 2016. A public hearing was held on August 9, 2016, in the Wallace State Office Building. The Department also accepted written comments through August 9, 2016. No public comments were received during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Commission adopted these amendments on September 20, 2016.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.306, 455B.310 and 455D.3.

These amendments will become effective on November 16, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **567—100.2(455B,455D)**:

“Comprehensive plan” means a course of action developed and established cooperatively between cities, counties and municipal solid waste sanitary disposal projects regarding their chosen integrated solid waste management system, its participants, waste reduction strategies, and disposal methods.

“Comprehensive plan amendment” means a notification, filed between comprehensive plan updates, that the planning agency seeks to change the participation or change the designated disposal project(s) as set out in the most recent approved comprehensive plan submittal.

“Comprehensive plan update” means a planning document that provides status reports on the integrated solid waste management system and that describes revision to the information and evaluation of the integrated solid waste management system and the proposed course of action for the next planning cycle.

“Consumer price index” means the measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. For the purpose of this title, consumer price index refers to All Urban Consumers (CPI-U), All Items, as published by the U.S. Bureau of Labor Statistics.

“Contaminated soil” means soil that contains any harmful constituent in a concentration that may harm human health.

“Fiscal year” means the state fiscal year from July 1 through June 30.

“Initial comprehensive plan” means a first or new comprehensive plan filed with the department pursuant to the provisions of Iowa Code section 455B.306.

“Integrated solid waste management” means any solid waste management system which is focused on planned development of programs and facilities that reduce waste volume and toxicity, recycle marketable materials and provide for safe disposal of any residuals.

“Municipal solid waste sanitary disposal project” means all facilities and appurtenances, including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of household waste without creating a significant hazard to the public health or safety. A municipal solid waste sanitary disposal project also may receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes, such as construction and demolition debris and commercial and industrial solid waste.

“Planning agency” means the designated contact agency on file with the department.

“Planning cycle” means the length of time between the due date for each comprehensive plan update submittal as approved by the department, which shall be five years effective March 1, 2011.

“Plan participants” means any individual, group, government or private entity that has direct involvement in an integrated solid waste management system.

“Service area” means an area served by a specific municipal solid waste sanitary disposal project defined in terms of the jurisdictions of the local governments using the facility. A planning area may include more than one service area. This definition does not apply to 567—Chapter 111.

ITEM 2. Amend rule **567—100.2(455B,455D)**, definitions of “Planning area” and “Solid waste,” as follows:

“Planning area” means ~~the localities and facilities involved in any aspect of the sanitary disposal project(s) management of waste, including out-of-state localities and facilities, if applicable~~ the combined jurisdiction of the local governments and the designated municipal solid waste sanitary disposal project(s) involved in a comprehensive plan. A planning area may include one or more municipal solid waste sanitary disposal projects.

“Solid waste” ~~is defined~~ has the same meaning as found in Iowa Code section 455B.301. Pursuant to Iowa Code section 455B.301(23)“b,” the commission has determined that solid waste includes those wastes exempted from federal hazardous waste regulation pursuant to 40 CFR 261.4(b) as amended through November 16, 2016, except to the extent that any such exempted substances are liquid wastes or

wastewater. This definition applies to all chapters within Title VIII. To the extent that there is a conflict, this definition controls.

ITEM 3. Rescind rule 567—101.2(455B,455D) and adopt the following **new** rule in lieu thereof:

567—101.2(455B,455D) Definitions. For the purposes of this chapter, the definitions found in 567—100.2(455B,455D) shall apply.

ITEM 4. Rescind and reserve rule **567—101.3(455B,455D).**

ITEM 5. Amend rule 567—101.4(455B,455D) as follows:

567—101.4(455B,455D) Duties of cities and counties. Every city and county of this state shall, for the solid waste generated within the jurisdiction of its political subdivision, provide for the establishment and operation of an integrated solid waste management system consistent with the waste management hierarchy under ~~rule 567—101.3(455B,455D)~~ Iowa Code section 455B.301A and designed to meet the state's waste reduction and recycling goals. Integrated systems and municipal solid waste sanitary disposal projects may be established separately or through cooperative efforts, including Iowa Code chapter 28E agreements as provided by law.

101.4(1) To meet these responsibilities, cities and counties may execute, with public and private agencies, contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of municipal solid waste sanitary disposal projects, and general administration of the same.

101.4(2) If a ~~city or county facility~~ planning agency refuses any particular solid waste type for management or disposal, the ~~city or county facility~~ planning agency must identify another ~~waste management facility~~ municipal solid waste sanitary disposal project for that waste within the planning area. ~~In the case of special waste, if~~ If no other waste management facility for that waste type ~~municipal solid waste sanitary disposal project~~ exists within the planning area, the ~~city or county~~ planning agency must, in cooperation with the waste generator, establish or arrange for access to another ~~waste management facility~~ municipal solid waste sanitary disposal project. Municipal solid waste sanitary disposal projects are required to maintain written approval from both the department and the planning agency in the planning area of origin in order to accept any Iowa-generated waste from outside the planning area.

101.4(3) All cities and counties or Iowa Code chapter 28E agencies established for the purpose of managing solid waste or implementing integrated solid waste management systems, or both, on behalf of cities and counties shall demonstrate compliance with the provisions of this chapter by their participation in a comprehensive plan approved by the department.

ITEM 6. Amend rule 567—101.6(455B,455D) as follows:

567—101.6(455B,455D) State volume reduction and recycling goals. The goal of the state is to reduce the amount of materials in the waste stream, existing as of the July 1, 1988, ~~baseline, 25 percent by July 1, 1994, and 50 percent by July 1, 2000~~ by an intermediate goal of 25 percent, and by a final goal of at least 50 percent, through the practice of waste volume reduction at the source and through recycling. The updated goal progress calculations provided by the department for each planning area shall be used by the department in reporting to the general assembly on the state's progress toward meeting the 25 and 50 percent goals. ~~If at any time the department notifies the planning agency in writing that the planning area has failed to meet the 25 percent waste volume reduction and recycling goal, at a minimum, the solid waste management techniques listed in Iowa Code section 455D.3(4) and subrule 101.13(8) must be implemented throughout the planning area.~~ The specific methodology for determining goal progress is outlined in rule 567—101.7(455B,455D).

ITEM 7. Amend rule 567—101.7(455B,455D), introductory paragraph, as follows:

567—101.7(455B,455D) Base year adjustment method. Planning agencies may request that the department complete a goal progress recalculation once per fiscal year to resolve any discrepancies and to further evaluate progress toward the state's waste volume reduction and recycling goals. At the time of approval of a comprehensive plan or comprehensive plan update, the department will use the most current complete fiscal year data set available to complete goal progress calculations, which will be used to meet the requirements outlined in ~~subrule 101.13(8) and~~ rule 567—101.14(455B,455D).

ITEM 8. Amend subrule 101.7(3) as follows:

101.7(3) Waste generated as part of an exceptional event or contaminated soils removed as part of a brownfield or contaminated site cleanup should not negatively affect a planning area's goal progress calculation.

a. Exceptional events include, but are not limited to, such unforeseen disasters as storms, fires, floods, tornadoes, or train wrecks. Exceptional events do not include economic development, derelict housing removal, or other planned activities/demolitions. Written requests to exempt exceptional event debris from goal progress calculations shall be made to the department on the required Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276.

Requests for goal progress calculation exemptions must be made within six months after initial disposal of the debris. The determination to exempt ~~exceptional event~~ exceptional-event debris from goal progress calculations shall be made solely by the department and shall not be made independently by individual municipal solid waste sanitary disposal projects or planning agencies. ~~Municipal solid waste sanitary disposal projects required to remit tonnage fees shall continue to pay solid waste tonnage fees until written notification of fee exemption is received, at which time any applicable fee credit shall be granted by the department.~~ Upon review of the request, the department will notify the municipal solid waste sanitary disposal project and planning agency of the determination in writing or request further documentation.

(1) No change.

(2) Additional documentation to verify the exceptional event and the debris it generated may be requested by the department. Failure to submit requested documentation may result in denial of the goal progress calculation ~~or solid waste tonnage fee exemption request(s), including any fee credits authorized by the department.~~ Documentation may include:

1. to 7. No change.

~~*b.* If the governor of the state of Iowa declares a city or county a disaster area as a result of an exceptional event, the municipal solid waste sanitary disposal project or planning agency may request that the debris be exempt from solid waste tonnage fees. A request to waive tonnage fees must be submitted in writing on the facility's or planning agency's letterhead prior to or in the same submittal as the Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276. Requests to waive tonnage fees, as provided for in this rule, must be made within 6 months after the initial disposal of the debris. A copy of the proclamation of disaster emergency declared by the governor of the state of Iowa is required in order for approval of tonnage fee exemptions. Any continuing documentation shall be submitted with each Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276, within the length of time authorized by the department. Solid waste disposed of outside the window of time authorized by the department shall not be eligible for exemption. To be eligible for an exemption, all exceptional event waste must be disposed of within the following time lines:~~

~~(1) For debris clearance and emergency protective measures, as defined by FEMA guidelines, 6 months from the end of the exceptional event.~~

~~(2) For permanent repair work, as defined by FEMA guidelines, 18 months from the end of the exceptional event.~~

~~Upon written request, with supporting rationale, extensions to these time lines may be granted solely by the department on a case-by-case basis.~~

c. b. Contaminated soils removed as part of a brownfield or contaminated site cleanup should not negatively affect a planning area's goal progress calculation. If the contaminated soil is to be disposed of

in a municipal solid waste sanitary disposal project, the municipal solid waste sanitary disposal project or planning agency must request the goal progress exemption in writing, in accordance with the procedures outlined in this rule. Written requests to exempt contaminated soil from goal progress calculations shall be made to the department on the Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276. Requests for goal progress exemptions must be made within ~~6~~ six months after initial disposal of the contaminated soil.

The determination to exempt contaminated soil from goal progress calculations shall be made solely by the department and shall not be made independently by individual municipal solid waste sanitary disposal projects or planning agencies. The department shall notify the municipal solid waste sanitary disposal project or planning agency in writing of the determination or shall request further clarification to make an exemption decision. Failure to submit additional information requested by the department regarding the request to exempt contaminated soil may result in a denial of the goal progress calculation exemption request. Contaminated soil occurrences not eligible for goal progress exemption include, but are not limited to, illegal municipal solid waste disposal sites and contaminated soils formed for the sole purpose of requesting goal progress exemption. Exemption requests shall include, at a minimum, the following:

(1) to (10) No change.

ITEM 9. Amend rule 567—101.8(455B,455D) as follows:

567—101.8(455B,455D) Submittal of initial comprehensive plans and comprehensive plan updates. Initial comprehensive plans and comprehensive plan updates filed with the department must include a signed electronic submission certificate, ~~which can be printed when all online forms have been submitted to the department for review. When hard copy portions of the initial comprehensive plan or comprehensive plan update are submitted to the department, only one original copy is necessary. Initial comprehensive plans and comprehensive plan updates are required to be double-sided and cannot be submitted in three-ring binders.~~ Comprehensive plan updates shall be submitted in accordance with the schedule, as and instructions provided by the department 12 months prior to the due date of the first comprehensive plan update for each planning cycle. ~~Planning agencies are not required to submit hard copies of the online forms for comprehensive plan updates.~~

ITEM 10. Rescind and reserve rule **567—101.10(455B,455D)**.

ITEM 11. Rescind and reserve rule **567—101.11(455B,455D)**.

ITEM 12. Amend paragraph **101.13(1)“g”** as follows:

g. A description of the current waste composition and waste generation rates and a projection of waste composition and waste generation rates ~~spanning two planning cycles~~ during the next planning cycle. This description should include the effects of anticipated planning area modifications on waste generation and composition in the future. These factors may include economic changes, population changes, loss or addition of communities to the planning area, and any other modification expected to affect the amount of waste generated.

ITEM 13. Amend subparagraph **101.13(1)“h”(3)** as follows:

(3) A detailed narrative of all other existing waste management programs in the planning area that addresses all components of the state’s waste management hierarchy. This narrative must include specific methodologies for the separation of glass, paper, plastic and metal. For each specific waste management program, the following shall be included:

1. to 5. No change.

6. The anticipated impact on the waste stream and diversion ~~over at least two planning cycles~~ during the next planning cycle.

ITEM 14. Amend paragraph **101.13(1)“k,”** introductory paragraph, as follows:

k. A specific plan and schedule ~~spanning two planning cycles~~ during the next planning cycle. Items that shall be addressed include:

ITEM 15. Amend subparagraph **101.13(2)“g”(3)** as follows:

(3) A detailed narrative of all waste management programs implemented since the last approved comprehensive plan or comprehensive plan update that addresses all components of the state’s waste management hierarchy. For each specific waste management program implemented since the last approved comprehensive plan or comprehensive plan update, the following shall be included:

1. to 4. No change.

5. The anticipated impact on the waste stream and diversion ~~over at least two planning cycles during the next planning cycle.~~

ITEM 16. Amend paragraph **101.13(2)“h,”** introductory paragraph, as follows:

h. An evaluation of progress toward meeting the state’s waste volume reduction and recycling goals using the goal progress calculation provided by the department 12 months prior to the due date of the comprehensive plan update, if requested by the planning agency. This analysis may use any combination of the following methodologies:

ITEM 17. Amend paragraph **101.13(2)“j,”** introductory paragraph, as follows:

j. A specific plan and schedule ~~spanning two planning cycles~~ for implementing the comprehensive plan during the next planning cycle. Items that shall be addressed include:

ITEM 18. Adopt the following new paragraph **101.13(2)“k”**:

k. Annual reports submitted by planning agencies designated as environmental management systems, pursuant to Iowa Code section 455J.7, which satisfy the comprehensive plan update submittal requirements of this subrule.

ITEM 19. Rescind and reserve subrule **101.13(8).**

ITEM 20. Amend **567—Chapter 101**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.306, 455B.310 and 455D.3.

ITEM 21. Amend rule **567—111.4(455J)**, definition of “Planning area,” as follows:

“Planning area” means the same as defined in rule ~~567—101.2(455B,455D)~~ 567—100.2(455B,455D).

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